IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.01.2019
CORAM:
THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Tax Case Appeal No.187 of 2011

Commissioner of Income Tax - I
Chennai. ...Appellant

-vs-

M/s.BNT Connections Impex Ltd.,
No.41, K.K.R.Avenue,
Moolakadai, Perambur,
Chennai - 600 011. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Chennai 'D' Bench, dated 03.12.2010 in ITA 889/Mds/2010 for the Assessment Year 2007-08. against the order of the Commisioner of income Tax(Appeals)-III,121,Mahathma Gandhi Road, Chennai. 34 dated 04.03.2010 in ITA.no.599/09.10/A 111 for the Assessment Year 2007 -2008 against the order of the Assistant Commisioner of Income Tax, Company Circle I(2)(i/c) Chennai. Dated 24.12.2009 in GIR/PAN AAACB2243D for the Assessment year 2007-2008.

For Appellant : Mrs.R.Hemalatha
Senior Standing Counsel

J U D G M E N T

(Delivered by T.S.Sivagnanam, J.]

This appeal is directed against the order passed by the Income Tax Appellate Tribunal, Madras 'D' Bench, dated 03.12.2010 in ITA 889/Mds/2010 for the Assessment Year 2007-08.

2. Heard Mrs.R.Hemalatha, learned Senior Standing Counsel for the appellant. Though the respondent assessee has been served and name is printed in the cause list, none appears for the respondent.

3. This Appeal has been admitted on the following Substantial Question of Law:-

"1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in confirming the order of the Commissioner of Income Tax (Appeals) deleting the disallowance of interest on borrowed funds diverted for advancing interest-free loans to sister concerns of Rs.1,69,84,787/- except on borrowed funds to the tune of Rs.74,76,027/- holding that the amounts were covered under the expression "commercial expediency?"

4. The short issue which falls for consideration is whether the Tribunal was right in confirming the order passed by the Commissioner of Income Tax (Appeals) -III, Chennai [CIT (A)] dated 04.03.2010, who deleted the disallowance of interest on borrowed funds, which according to the Revenue was diverted for advancing the interest-free loans to sister concerns.

5. The question would be as to whether the said diversion of funds can be considered as commercial expediency.

6. The Tribunal took note of the factual position and found that the case of the assessee is acceptable. The assessee explained the transaction on the following terms:-

"The investment in wholly owned subsidiary company BNT Connections LLC USA was partly made in the assessment year 2003-04 to the extent of Rs.4,90,02,500/- and Rs.4,63,67,500/- was made in the assessment year 2005-06. The investment made in the assessment year 2003-04 was out of the sale proceeds received on disinvestment of shares of another BNT group subsidiary company Berkley Sportwear LLC, USA and the assessee disinvested its stake in this company based in USA which has different brand name "Berkley" and floated its own new subsidiary company under its own brand name "BNT" known as BNT Connections LLC USA. It was stated that the investment in assessment year 2004-05 was out of the pre-closure of fixed deposits in BNT Connections Impex Ltd., which was accumulated out of surplus funds of internal accruals since 2001-02. Accordingly, the entire investment was out of assessee's own funds and no part was out of the borrowed funds which could be said to have been utilised for the purpose in the year 2002-03 and in assessment year 2004-05 in the investment in wholly owned subsidiary company."

7. The above submission made by the assessee was furnished by producing bank accounts of the company for the relevant assessment years to establish the deposit and withdrawal. Furthermore, the loan advanced by Shri Thakur Bakshani of Rs.1,05,06,690/- was stated to be against the loan taken from the earlier to the extent of Rs.3,00,00,000/- This was also substantiated by the assessee by producing accounts. Likewise, the assessment lying in the account of Supreme Art Works to the extent of Rs.3,04,301/- was shown to be towards business expenses and the said party is a sundry debtor of the assessee and no interest could be charged on such balance due under business transactions. The assessee fairly conceded that a sum of Rs.74,76,027/- was made over to the sister concerns out of borrowed funds and as stated, for this, interest at the rate of 8% could be disallowed. This submission was accepted by CIT(A). The Revenue argued before the Tribunal that the reason given by the Assessing Officer justifies the disallowance of entire interest and it is not a small amount and the contentions advanced by the assessee before the Assessing Officer were repeated before the CIT(A).

8. The Tribunal after considering the oral submissions as well as written arguments and the documents which were placed by the assessee before the CIT(A) on facts held that the pattern of loan extended to sister concerns would qualify business expediency. It referred to the decision of the Hon'ble Supreme Court in S.A.Builders Ltv. v. CIT reported in 288 ITR 1 (SC).

9. Mrs.R.Hemalatha, learned Standing Counsel appearing for the appellant would contend that the Hon'ble Supreme Court in the judgment in S.A.Builders (supra) had held that it is not in every case interest on borrowed loan has to be allowed if the assessee advances it to the sister concern. We agree with the submission of the learned Standing Counsel that it is not a universal rule. However, in the impugned order passed by the Tribunal, we find that the Tribunal took note of the factual position and held that loans advanced by the assessee was a business expediency.

10. The learned Standing Counsel would refer to the decision of the High Court of Kerala in Commissioner of Income-Tax, Cochin v. Alapatt Brothers [2016] 386 ITR 338 (Kerala) . In the said decision, the Division Bench held that the CIT(A) though referred to the judgment in S.A. Builders did not examine as to how the principles therein would apply to the facts of the case. However, as indicated by us in the preceding paragraphs, the Tribunal has recorded the facts to support its stand that the decision in S.A.Builders would aid the case of the assessee. The CIT (A) was also satisfied with the nature of the transaction and it would qualify as "business expediency". The learned Standing Counsel further submits that the Hon'ble Supreme Court in the case of Additional Commissioner of Income-tax v. Tulip Star Hotels Ltd., [2012] 21 Taxmann.com 97 (SC), has doubted the correctness of the decision in S.A.Builders. Merely because a reference is pending that does not mean that the decision rendered by the Hon'ble Supreme Court is no longer good law. As pointed out by us earlier, the CIT(A) and the Tribunal has discussed the factual position and held that the transaction would qualify "business expediency".

11. Mrs.R.Hemaltha, learned Standing counsel referred to the decision in the case of Punjab Stainless Steel Inds. v. Commissioner of Income-tax VII [2010] 324 ITR 396 (Delhi). We are of the considered view that the decision will not in any manner advance the case of the assessee since the factual position has to be examined to hold whether the loans extended by the assessee would advance its business interest. On facts, the first appellate authority and the Tribunal held that the transaction would qualify as "Business expediency". We cannot sit on appeal over the said factual findings. It is for the above reasons we hold that there is no substantial question of law involved in this appeal. Accordingly, the Tax Case Appeal stands dismissed.

12. For the above reasons, the appeal filed by the assessee is allowed and the substantial questions of law are answered in favour of the assessee. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

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To

The Income Tax Appellate Tribunal Madras 'D' Bench. Chennai.

2.The Commisioner of income Tax(Appeals)-III,121,Mahathma Gandhi Road, Chennai. 34

3.The Assistant Commisioner of Income Tax, Company Circle I (2)(i/c) Chennai 34.

+1cc to Mrs.R.Hemalatha , Advocate SR.No. 7317

T.C.A.No.187 of 2011

A.SK(25/02/2019)